

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HILLARY WALLS-STEWART,

Plaintiff,

v.

MARGARET GILBERT, G. STEVEN
HAMMOND, DAN PACHOLKE, ERIN
LYSTAD, SARA SMITH, RICHARD
MORGAN, JOHN/JANE DOE,

Defendants.

CASE NO. C16-5584BHS-DWC

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 33), and Plaintiff Hillary Walls-Stewart’s (“Plaintiff”) objections to the R&R (Dkt. 35).

On September 21, 2016, Judge Christel issued the R&R recommending that the Court deny Plaintiff’s motion for preliminary injunction because it is unrelated to the claims in the complaint and she fails to show irreparable harm. Dkt. 33. In sum, Plaintiff moves the Court to order Defendants Sara Smith and Erin Lynstad to show her how to use her continuous positive airway pressure (“CPAP”) machine for her obstructive sleep apnea. Dkt. 11. Judge Christel concluded that (1) the complaint requests a CPAP machine and a claim for failure to instruct falls outside the complaint and (2) the evidence in the record sufficiently shows that Plaintiff has been given written instructions and training by another inmate on how to use the machine. Dkt. 33 at 4–5. On

1 September 26, 2016, Plaintiff filed objections stating that she is exhausting the
2 administrative process on her claims for inadequate training and that she submitted
3 evidence contesting whether another inmate assisted her with the CPAP machine. Dkt.
4 35.

5 The district judge must determine de novo any part of the magistrate judge's
6 disposition that has been properly objected to. The district judge may accept, reject, or
7 modify the recommended disposition; receive further evidence; or return the matter to the
8 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

9 In this case, Plaintiff admits that her retaliation based failure to train claims are not
10 currently part of this action. The claims are in the administrative process and there is no
11 evidence that Defendants are obstructing or otherwise failing to address the grievances.
12 This is sufficient to deny the motion for preliminary relief because the Court will not
13 interfere with claims that are still being exhausted. To the extent that contested evidence
14 exists on the issue of irreparable harm, the issue is moot because the claims are not ripe
15 for judicial review. Therefore, the Court having considered the R&R, Plaintiff's
16 objections, and the remaining record, does hereby find and order as follows:

17 (1) The R&R is **ADOPTED**; and

18 (2) Plaintiff's motion for temporary relief (Dkt. 11) is **DENIED**.

19 Dated this 13th day of December, 2016.

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22 BENJAMIN H. SETTLE
United States District Judge